STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/23/01**	Bill No:	**AB 1198**
Tax:	**Sales and Use**	Author:	**Matthews**
Board Position:		Related Bills:	**AB 1388 (Aanestad)**

BILL SUMMARY

This bill would exempt from sales and use tax the sale and purchase of liquefied petroleum gas (LPG) that is delivered to a "qualified residence," as defined, by the seller, that is sold for household use in the qualified residence.

ANALYSIS

Current Law

Sales or use tax applies to the retail sale of tangible personal property in this state, unless specifically exempted by statute. Section 6353 of the Sales and Use Tax Law currently provides an exemption from sales and use tax for the sale or use of gas delivered to consumers through mains, lines, or pipes. Thus, sales of LPG delivered to consumers through mains, lines, or pipes currently qualify for exemption from tax.

However, in order to qualify for the exemption under Section 6353, the LPG must be sold in vaporized form and delivered to the purchaser through mains, lines or pipes. The Board has determined that this requirement is met even if the gas is initially delivered in liquid form into a tank on the purchaser's premises if the tank belongs to the seller of the gas, or is leased by the purchaser to the seller and there is an explicit agreement between them stating that the seller retains title to and possession of the LPG until it is delivered in vapor form to the customer through the customer's mains or pipes. Virtually all sales of LPG for residential use, except for use in barbecues, could qualify for this exemption if the parties were to properly structure the transactions. However, not everyone takes advantage of this exemption in part because of the difficulty in understanding how to comply with its requirements. As a result, essentially identical sales of LPG are subject to tax, or not, based solely on whether the parties understand the requirements of the exemption.

Proposed Law

This bill would amend Section 6353 of the Sales and Use Tax Law to provide an exemption from sales and use tax for the sale and use of liquefied petroleum gas delivered to a qualified residence by the seller that is sold for household use in the qualified residence.

The bill would define "qualified residence" to mean a residence, not serviced by gas mains and pipes, with a tank storage capacity for LPG that is equal to or greater than 30 gallons.

In addition, this bill would allow local jurisdictions that are authorized to impose a utility user tax to impose a substantially similar tax upon LPG.

Background

The original Retail Sales Tax Act, enacted in 1933, provided the current exemption from sales and use tax of gas, electricity, and water when delivered to consumers through mains, lines or pipes.

Chapter 402 of the Statutes of 1972 expanded this exemption to include water sold in bulk quantities of 50 gallons or more for general household use if the residence is not serviced by mains, lines, or pipes.

Chapter 1010 of the Statutes of 1978 included exhaust steam, waste steam, heat or resultant energy, produced in connection with cogeneration technology.

Chapter 420, Statutes of 1986, specified that water delivered through mains, lines or pipes, for purposes of the exemption, includes steam and geothermal steam, brines and heat.

Bills similar to AB 1198 have been considered in the past. During the 2000 Legislative Session, AB 1788 (Machado) was held in the Assembly Appropriations Committee. During the 1999 Legislative Session, AB 214 (Machado) was held in the Assembly Appropriations Committee. In the 1997-98 Legislative Session, AB 1019 (Machado) was held in the Senate Appropriations Committee. In the 1995-96 Session, SB 1455 (Leslie) failed passage in the Senate Revenue and Taxation Committee. The Board voted to support AB 1788, and took a neutral position on the remainder of the bills.

Other bills proposing to exempt various fuel and gas substances for residential use not delivered through mains, lines or pipes include: AB 149 (Chappie) of the 1977-78 session, AB 359 (Chappie) of the 1979-80 session, AB 10 (Kelly) and AB 130 (Lockyer) of the 1981-82 session, AB 2203 (Kelly) of the 1983-84 session, AB 2117 (Hannigan) and AB 2562 (Seastrand) of the 1985-86 session and AB 127 (Areias) of the 1987-88 session.

COMMENTS

1. **Sponsor and purpose.** The author is the sponsor of this bill and the purpose is to provide equal tax treatment for those who must use liquefied petroleum gas. The residences of the majority of affected consumers are not located in areas serviced through mains, lines, or pipes. Their purchases of LPG can qualify for the existing exemption only when they meet all the requirements for that exemption even though these consumers use the LPG for cooking and heating just as other consumers who reside in areas serviced through mains, lines, and pipes use electricity and natural gas.

2. **The record-keeping of LPG sellers would change.** Many LPG sellers provide a complete LPG service. In other words, in addition to selling LPG for residential purposes, many sell for commercial, industrial, agricultural, motor fuel, and forklift purposes. Enactment of this measure would require LPG sellers to separately account for LPG sold for residential uses from other sales for purposes of filing sales and use tax returns and reporting the tax. However, in order to qualify for the existing exemption provided by Section 6353, the seller already must separately account for these transactions, enter into a special contract with the purchaser, and maintain that contract to support the claimed exemption. Enactment of this measure would decrease the record-keeping requirements because the sellers would not need to enter into, or retain, these types of contracts.
3. **Technical amendment suggested.** The proposed exemption would apply to sales of LPG delivered to a qualified residence for household use. This would allow sales in any quantity, such as 1 quart, to qualify for the exemption. It is recommended that “residence.” on page 2, line 28 be replaced with “residence, provided the liquefied petroleum gas is delivered into a tank with storage capacity for liquefied petroleum gas that is equal to or greater than 30 gallons.”
4. **Related legislation.** AB 1388 (Aanestad) would exempt propane gas from the sales and use tax without any qualifying conditions.

COST ESTIMATE

Some costs would be incurred in notifying affected retailers, and verifying deductions claimed on LPG sellers’ sales tax returns. These costs would be absorbable.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

The U.S. Energy Information Administration in its publication, *Residential Energy Consumption in 1997*, has published the following information regarding residential consumption of and expenditures for liquefied petroleum gas (LPG).

LPG Use	Households (thousands)	Consumption (millions of gallons)	Expenditures (millions)
Space heating	200,000	81	$ 90
Water Heating	300,000	84	100
Appliances	300,000	18	20
Total		183	$210

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

Some of the LPG sold for residential use is already exempt under Section 6353 because the gas was delivered through mains, lines or pipes. The Board has determined that the requirements of Section 6353 have been met even if the propane is initially delivered in liquid form to a tank on the purchaser's premises if the tank belongs to the seller of the propane, or is leased by the seller from the purchaser, and there is an explicit agreement between them passing title to the gas at the time it enters the customer's pipes in vapor form.

Based on information derived from a survey conducted by the Board on propane dealers in California, we estimate that approximately 35 percent of the LPG sold for residential use is currently exempt. The total expenditures that would be exempted by this proposal would be $137 million. ($210 million x 65% = $137 million)

Revenue Summary

The revenue impact from exempting LPG sold for household use in qualified residences from the sales and use tax would be as follows:

	Revenue Loss
State (5%)*	$ 6.9 million
Local (2.25%)	3.1 million
Special District (0.67%)	0.9 million
Total	$ 10.9 million

* While the state tax rate is 4.75 percent for calendar year 2001, it is assumed the tax rate will return to 5.0 percent in 2002.

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